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File No. O. Inams/47

Legal DEPARTMENT

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Subject:—

Opinions re: granting grants of inams and Jahagirs

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In Vajesingji V. Secretary of State (48 Bom. 613 P.C.) it was held:

> "When a territory is acquired by sovereign State for the first time that is an act of State. It matters not how the acquisitions have been brought about. Such rights as have been recognised by the new ruler can be made good. Such rights as he had under previous rulers do not avail him".

In Secretary of State V. Bai Rajabai (39 Bom.625), it was held that "the only legally enforceable rights are those and only those which by agreement express or implied or by legislation the new sovereign chose to confer on the grantee". Consequently the Sanad at p. 33 which was issued by Shinde to Dinanath Bawa continuing the grant to him, his sons and grandsons etc. hereditarily should be ignored for the purpose of determining the nature of the grant. The Sanad (at p. 31 ante) issued by the British Government on 5-7-1871 provides that the grant should be continued to Dado Ravji & Dinanath Ravji and their legitimate and adopted heirs subject to two conditions viz. (1) that they should pay a judi of Rs.292 to Government and (2) that they should remain loyal to British, the breach of both or either of which would justify resumption of the grant. The question for the consideration of the R.L.A. is whether the grant is transferable.

In a transfer to "A and his heirs and assigns", the heirs and assigns are not transferees, but the words are words of limitation indicating an estate in fee simple or an absolute estate. The words of limitation such as "and his heirs" or "from generation to generation" denote an absolute estate. These words are said to denote an estate of inheritance by which is meant that the heirs of the grantee take by inheritance by which is meant that the heirs of the grantee take by inheritance from the grantee (see Mulla's Transfer of Property Act, p.66). Consequently the grant in the present case is absolute and hereditary. If so, the principle stated in the R.L.A's opinion No.4329 dated the 11-5-1934 followed in R.L.A's

opinion No..1535 dated the 6-11-1935 clearly applies and the Inam is alienable.

The Inam considered in H.L.A's opinion No.6171, dated the 17-7-1940 was granted to the holders and their lineal male descendants and the H.L.A. opined that the words"continued to lineal male descendants" are not words indicative of general inheritance, but are words of limitation. It is therefore apparent that there is no conflict between the H.L.A's opinions No.1153, dated the 6-11-1935 and No.6171, dated the 17-7-1940. Further obviously the words "Continued to lineal male heirs".

It is true that in the brief prepared in Alangudi Civil Suit No.105 of 1935, in respect of the Inam in the present case, it was stated that the Inam having been declared to be continuable to the grantee and his heirs lineal or adopted is not transferable; but that cannot be taken as an incontrovertible statement of law, for all possible defects are raised in the brief.

In the circumstance it appears that the view taken by the Civil Judge in Civil Suit No.3.3 of 1930 is correct and there appears no objection to recognising the alienation in the present case.

Sd. H.L.

Secretary of Legal Affairs.

U... to R.D. No.6073

Dated the 11th June 1947.

All.
3 C.D/5.

Office of the R.L.A.

One of the i nci nts of a Toka tenure is Government's right to claim an enhanced assessment at its discretion (s e Sha arj e Jivanji Vs. The Collector of Bombay 3 Bom.L.R.3; Mandelkar's Land Tenures Vol.I .571 . In Appeal No.276 of 1939 the High Court has held that the Jamad in the case implies the grant of the present and future revenues without qualification; and that decision has been upheld by the Privy Council. That being so, it is an Inam grant (see Mandelkar's Land Tenures ~~Mhx~~ Vol.I .57 . Consequently that lands comprising the grant being not li ble to enhanced assessment cannot be appropriately described as Toka lands; but the question of con version of the Toka tenure of these lands into Inam tenure s does not arise and no sanction of Government for such conversion a pears necessary. The view taken by the Collector appears ~~xxxxxxx~~ to be correct.

Sd. D. V. Vyas

Superintendent of Legal Affairs.

U.O. to R. S., No.7.66 dated the 1.th July 1967.

KAM.
4.9.
9/8/66.

Office of the H.L.F.

It appears that a sanad was granted in 1823, by the order of His Excellency the Viceroy and Governor General to Tukaram Bargo conferring a grant of land in the Bombay Presidency, in recognition of his distinguished service during the Great War 1914-1918; and in pursuance of it by his Memo. No. S.L.R./61, dated 2.th March 1923, the Collector of Satara with the approval of the Commissioner sanctioned the grant of lands bearing S. Nos.7-/1 and 6-/3 in and village of Koregaon Taluka. It was now represented that these lands originally belonged to one Tukaram Malhari on whose conviction they were forfeited to Government during his sentence under the old provisions of section 62 I.P.C. These lands on forfeiture were leased out by Government from 1912-23. Tukaram Malhari was released under G.O. No. 6047, dated the 1st October 1921, but died in October 1931. Neither Tukaram nor his heirs preferred any claim for the restoration of these lands within the period of 12 years. One Khandu Keshu Uchale, nephew of Tukaram has now applied for the restoration of these lands. Secretary, L.D. observes:-

"The point at issue is that Government gave as Jangi Inam in 1923, lands which were not Government's to give as they should have been restored to the heirs of the convict during whose life-time they were forfeited under the old provisions of section 62 I.P.C. H also wishes to know whether the sanad granting the Jangi Inam can, in these circumstances, be cancelled and other land given to the Jangi Inamdars instead".

It has been repeatedly held by the Bombay High Court that the grant of land by a sanad cannot be cancelled by Government (cf. 33 B.L.R. 1.5; 46 B.L.R. 413.) The grant of lands in the present case is referable to the Sand issued by the order of His Excellency the Viceroy and Governor General. Because, the fact that the lands granted to Mr. Tukaram Bargi did not belong to Government would not be a valid ground for cancelling the grant, for if the grantee is required to continue to hold the

lands subject to a defective x title of the grantor, if any, it is his concern. The applicant's claim, if any, for restoration of these lands is clearly time-barred. In the circumstances, it appears, it would not be legally feasible for Government to cancel the x grant unless the grantee agrees to accept some other lands in exchange.

Sd. D. V. Vyas,

Commissioner of Legal Affairs.

U.O. to R.D., No.7016, dated the 29th July 1947.

KAH/G-5
4 c.

Office of the H.L.A.

By G.O. (...., No.4241/2., dated the 8th January 1933, Government accorded sanction to the levy of enhanced assessment and ordered that all assessment in excess of one pie per square yard per annum to which extent only the inamdar's right was recognised, should be levied from the holders of the lands and credited to Government. These orders were issued by Government on the assumption that these were lands of a Toka tenure. This assumption has now proved to be wrong as a result of the Bombay High Court decision which was confirmed in appeal by the Privy Council. Consequently, the lands would be no longer liable to be assessed as Toka lands. The lands were not converted to Toka tenure and that being so, the question of reconversion of these lands to their former tenure does not arise. If, however, as asserted by Mr. Vaidya in his letter at p. 35 ante, these lands have been assessed as directed in G.O., R.D. No.4241/2., dated 8th January 1933 and transferred to the the rent rolls of "Toka" lands the Collector should be directed to restore status quo by retransferring the lands to their original rent rolls.

Sd. P.M.L.

Remembrancer of Legal Affairs.

U.O. to R.D., No.3866, dated the 23rd August 1937.

MM/9-5.
4 c.

Office of the H.L.A.

Alienation of revenue inam land for repairs to temple - sanction of Government.

It is true that land held on behalf of a religious or charitable institution, when alienated, can be resumed by Government by the levy of full assessment from the alienee (see article 66, pages 65 of Joglekar's Alienation Manual, but there is no provision wherebuner Government can give sanction for such alienation. Under clause of section 4 of Bombay Act LI of 1863, lands held on behalf of religious or charitable institutions wholly or partially exempt from the payment of land revenue shall not be transferable from such institutions either by assignment, sale (where such sale be judicial, public or private), gift, devise or otherwise howsoever and no nazarana shall be leviable on account of such lands. It is apparent from this provision that the land which is a part of the endowment property of Shrix Baleji temple is inalienable. Consequently, Government may inform Dr.V.G.Jonaikar that the land being inalienable and there being no provision empowering Government to sanction alienation, the question of Government giving sanction to such alienation would not arise.

~~Sd. xxx.VKA.~~, I d. P.M.L. 27/11

Remembrancer of Legal Affairs.

U.R. to R.D. No.11260, dated the 28th November, 1947.

KAN/9-5.

Office of the A.C.A.

Inam Village of Vadner.

Election of Vahivatdar-

Vadner is a Kunbi village in Nasik district held by more than 16 sub-shares. The Peranjpe family is one of these sub-shares, and Mr. Vishwanath Peranjpe the was manager of the Joint Hindu family consisting of himself enchis two brothers Keshavh and Krishnaji, managed the village during his a life time from 1916-17 till his death in 1934. In 1936 there was a disruption of the joint family and the property was partitioned by an amicable decree. By that amicable decree it was arranged that Mr. Vishwanath Ganesh should manage the village and taken the suitable attention to the management as the eldest member of the eldest branch and Vanjvatdar of the village for the purpose to be incurred on amicable account of the management of the village. After Vishwanath's death his son Vishnu requested the Collector to enter his name to the share held by his father and be recognised him as vahivatdar of the village in place of his deceased father. The Collector ordered the entry of his name in place of his a father but refused to recognise him as vahivatdar on the ground that vahivatdar was a person selected from amongst the sub-sharers by a majority. Thereafter an election was held by the Collector in which one Mr. Kenade, a sub-sharer and Mr. Vishnu Vishwanath Peranjpe were candidates. Mr. Kenade secured majority of votes and was declared elected as vahivatdar. Mr. Vishnu Vishwanath ~~Peranjpe secured majority of votes and was declared elected as vahivatdar~~ appealed to the Collector on the ground that his two uncles Keshav and Krishnaji

who voted for Mr. Rana do wanna were estopped from so doing in consequence of the award decree in Civil Suit No.233 of 1936. As the Collector declined to interpret the terms of the decrees as desired by Mr. Parandjpe, he filed a regular civil suit No.104 of 1944 against his two uncles Keshav and Krishnaji for two reliefs one of which was a claim for Rs.103 /- as damages caused by reason of the loss of right to managng the Dumala village of Vadner by the conduct of the defendants. In that suit, the court held "in my opinion, the award decree of 1936 does give Vishwanath the airight to manage the village and receive the chiller for expenses of management. This right obtained by Vishwanath came to his eldest son Vishnu, plaintiff No.1, That this was the intention may be seen from the xxxxxxxxxxx recitals of present defendants in regular suit No.314 of 191. filed by them against Vishwanath. After the decree, Vishwanath continued to manage the village and receive the chiller. He died on 3rd February 1942. The plaintiff's claim for management of the Vadner village and to recover the chiller was not recognised. The Rev Revenue authorities directed that the selection of the vahivatdar should be by election from among sharers. This election took place at a metting held on 2nd November 1942 and one Ramdas was elected, defendant No.1 voting for Ramdas. If the defendants had refrained from supporting any of the sharers or supported plaintiff No .1, he would have no difficulty in being recognised by the Revenue authorities as vahivatdar. Thus it is the conduct of the defendants that made all the difference and that conduct was in contravention of the terms of the decree. It is

Said decree does not say defendants shall vote for him would be against public policy. The defendants by supporting plaintiff would be only carrying out the terms of the decree and would be enabling the

plaintiff to obtain recognition at the hands of the Revenue authorities. They would be asserting the right to be with the family and the eldest member of the eldest branch in conformity with the terms of the decree. I cannot construe the terms of the decree as being against public policy. By the time this suit was decided, there was a second election at which Mr. Vishnu Vishwanath Paranjpe and Mr. Ranade again competed and the latter succeeded with the support of the uncles of the former. Mr. Paranjpe has again appealed to the Collector challenging the election of Mr. Ranade on the ground that in pursuance of the decision of the court in Civil Suit No.154 of 1944, his uncles were bound to vote for him and their votes cast in favour of Mr. Ranade should be construed as cast in his favour or should be ignored, in either of which case, he would succeed. The Collector appears to be of the opinion that the Revenue authorities are bound by the decision of the Court, and consequently the votes of Mr. Paranjpe's uncles should be counted in his favour. The commissioner does not agree with the Collector, observing that "supposing for argument's sake that the appellant's uncles deliberately disobeyed Civil Court's decree, then the proper remedy for the appellant is to take action against them in the Civil Court under rule 32 of Order XXI of the Civil Procedure Code and not in Revenue Courts, and for these reasons, he has no case and his appeal deserves to be dismissed." The R.L.A. is requested to advise.

It is undisputed that the manager of the village of Vadner has to be elected from among the sharers.

The fact that Mr. Vishwanath Ganesh Paranjpe acted as manager of the village for a number of years, does not vest in the family any hereditary right for such management and in fact no such right is alleged. It is true that by the award decree of 1936, the right to manage the village was allowed to continue with Mr. Vishwanath Ganesh Paranjpe and he was allowed the chillar to enable him to meet the expenses of such management, but that decree did not purport to confer any vested heritable right in Mr. Vishwanath. Reading the decree in the light of the admitted fact that the right to manage the village could go by election, it appears that Mr. Vishwanath Ganesh being the eldest brother, was allowed to manage the village and take the chillar. Since no such right vested in the family, there could arise no question of its being a part of the joint family property which could be partitioned between the brothers. The view taken by the Court in regular civil suit No.154 of 1944 is thus open to doubt. However that may be, it is at any rate clear from the order of the Civil Court that the uncles of Mr. Vishnu Vishwanath have not been prohibited from voting against him nor have they been directed to vote in his favour. Furthermore, neither Government nor any of the other sharers being parties to the suit, that decision of the Civil Court can have no binding effect on either Government or the other subsharers. Consequently, it would not be competent for the Revenue authorities either to discard the votes recorded by the uncles of Mr. Vishnu

Vishwanath nor would it be lawful to count their votes in his favour. The view taken by the Commissioner is correct.

Sd. P. B. L.

Remembrancer of Legal Affairs.

U.O. to ...., No.13363, dated the 24th December 1937.

KAH/10-3.